

A society exerts a positive selection on individuals by its definition of crimes and by its criminal jurisprudence. The taboos are turned into laws and are enforced by positive penalties.

2IL Crimes. The number and variety of crimes depends on the positive action of the state. What things are crimes in a state, therefore, indicates what the ruling authority desires to prevent. The motives have often been entirely selfish on the part of a king or a ruling caste, or they were dictated by a desire to further the vanity of such persons. By judicial precedent at Rome it was made a crime to beat a slave, or to undress near a statue of the emperor, or to carry a coin bearing his image into a latrine or a-lupanar.<sup>1</sup> Xiphilin, in his epitome of the history of Dio Cassius, inserts a story that, in the reign of Domitian, a woman was executed for undressing near the statue of that emperor.<sup>2</sup> The notions in the mores of what ought to be prevented have been very variable and arbitrary. Juvenal denounces a consul who while in office drove his own chariot, although by night.<sup>3</sup> Seneca was shocked at the criminal luxury of putting snow in wine.<sup>4</sup> Pliny is equally shocked at the fashion of wearing gold rings.<sup>5</sup> Lecky, after citing these cases, refers to the denunciations uttered by the church fathers against women who wore false hair. Painting the face is an old fault of women, against which moral teachers of all ages have thundered. Very recently, amongst us, clergymen have denounced women for not wearing bonnets in church, because Paul said that she "dishonoreth her head, for that is even all one as if she were shaven."<sup>6</sup> These were not indeed cases of crimes, but of alleged vices or sins. In sumptuary laws we have cases of legislation

which made  
fashions crimes. In the eighteenth century there  
was little legis-  
lation against brothels, drinking places, or  
gambling houses. We  
make it a crime to sell rum, but not to drink it.  
On the other  
hand, until recently commercial transactions and  
the lending of

<sup>1</sup> Suetonius, *Tiberius*, 58.

<sup>2</sup> Manning, *Trans. of Xiphilin*, II, 83; *Xiphiliris Epitome*,  
published in 1551.

\* *Satires*, VIII, 146.

<sup>4</sup> *Nat. Quaest.*, IV, 13; *Ep.*, 78.

\* **ffift.** *Nat.*, XXXIII, 4.

\* *N. Y. Times*, August 18, 1903. (Cf. sec. 483.)